

FILED

AUG 29 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MOSES ONDERI NYABERE,

Defendant - Appellant.

No. 05-10588

D.C. No. CR-05-01582-CRP

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Charles R. Pyle, Magistrate Judge, Presiding

Submitted August 21, 2006^{**}

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Moses Onderi Nyabere appeals from his guilty-plea conviction and 3-month sentence for being an accessory after the fact to unlawfully assisting an alien to

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

hinder or prevent his apprehension, trial, or punishment, in violation of 8 U.S.C. § 1325 and 18 U.S.C. § 3.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Nyabere has filed a brief stating there are no grounds for relief, and a motion to withdraw as counsel of record. No pro se supplemental brief or answering brief has been filed.

Because our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 82-83 (1988), indicates that Nyabere knowingly and voluntarily waived his right to appeal and was sentenced within the terms of the plea agreement, we enforce the waiver and dismiss the appeal. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000) (stating that an appeal waiver is valid when it is entered knowingly and voluntarily).

Counsel's motion to withdraw is **GRANTED**, and the appeal is **DISMISSED**.